

J. Melody



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Snow White Cleaners and Linen Supply, Inc.  
**File:** B-225636  
**Date:** March 26, 1987

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### **DIGEST**

Cancellation of hospital laundry services solicitation after bid opening is proper where agency determines specifications have to be revised to establish that only certain types of washing machines will satisfactorily safeguard against contamination of clean laundry from contact with soiled laundry bacteria; protesting low bidder's facility is not equipped with specified machine types; and protester does not establish that the requirement for certain types of machines exceeds the government's needs.

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### **DECISION**

Snow White Cleaners and Linen Supply, Inc. protests the Department of Health and Human Services' (HHS) decision to cancel invitation for bids (IFB) No. 243-IFB-86-0126 for laundry services at the Alaska Native Hospital, Anchorage, Alaska. We deny the protest.

The IFB was issued September 12, 1986, and established October 21 as the bid opening date. Of the three bids received by the opening date, Snow White's was low at \$221,000. A preaward survey at Snow White's facility, however, found several plant design and operational deficiencies which, the survey concluded, could lead to contamination of clean linen. The contracting officer concurred and determined Snow White nonresponsive.

Because Snow White is a small business, HHS referred the nonresponsibility determination to the Small Business Administration (SBA) for a final responsibility determination under SBA's certificate of competency (COC) procedures. On December 11, SBA advised the agency that it was favorably considering Snow White's COC application, on the basis that Snow White was capable of correcting the preaward survey deficiencies.

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On December 12, HHS contracting personnel, held a meeting to discuss whether to appeal SBA's proposed issuance of a COC, and concluded that the specifications had not been drawn tightly enough to ensure to the extent possible that contamination of clean laundry would not occur due to facilities or procedures that brought the clean laundry into contact with bacteria from soiled laundry. HHS therefore canceled the solicitation and on February 20 issued IFB No. 243-IFB-87-0063, adding a requirement that double door pass through washer/extractors (which, as we understand from the record, operate by loading soiled laundry in one door and emptying clean laundry out of a second door in an adjacent room) or overhead chute loaded washers be used to ensure "physical separation" of clean and soiled laundry operations, a requirement under the original IFB. The new IFB makes other minor changes in the original laundering procedures, and also requires that the contractor have a successful history of providing hospital laundry services.

Snow White protests that cancellation of the original IFB due to inadequate safeguards against laundry contamination was unjustified since the IFB contained detailed procedures to eliminate this possibility, including the "physical separation" requirement. Snow White claims that the real impact of the changes in the new IFB will be to exclude all firms from the competition but the incumbent, Alaska Cleaners. In this regard, according to Snow White, no firm with a facility within a reasonable distance of the hospital is equipped with double door pass through washer/extractors, and only Alaska Cleaners has overhead chute loading machines. Snow White has single side-door washers, and maintains that these machines are considered adequate by other hospitals when coupled with requirements for physical separation and proper air flow (also a requirement in the original IFB).

Due to the potential adverse impact on the competitive bidding system of canceling a solicitation after bid prices have been exposed, contracting officers may cancel a solicitation after bid opening only where there is a compelling reason for doing so. Commercial Envelope Mfg. Co., Inc., B-213272, Feb. 15, 1984, 84-1 C.P.D. ¶ 206. The failure of a solicitation to set forth specifications adequate to meet the agency's minimum needs constitutes a compelling reason to cancel. W.H. Smith Hardware Co., B-219987.2, Jan. 21, 1986, 86-1 C.P.D. ¶ 62.

Here, the addition of the requirement for specific types of washers undisputedly reflects a significant change in the government's requirement since it restricts the manner in which the contract can be performed, and it would be costly

(as much as \$50,000 according to HHS) for any firm to convert its operation to meet the requirement. Thus, the addition of this restriction could have limited the number of firms that could compete and, in fact, would have eliminated Snow White, the low bidder, from the competition. Given the new requirement, award to Snow White based on its original bid would be inappropriate since it would require the agency to forego its stated need for performance with the specified types of washers, and cancellation was the proper course for the agency to take. Compare Summerville Ambulance, Inc., B-217049, July 1, 1985, 85-2 C.P.D. ¶ 4.

Of course, cancellation based on a requirement for certain types of washers would not be warranted were it shown that the requirement is not part of the agency's actual minimum needs. Snow White's protest is based on this line of argument, that is, Snow White contends that its washers are essentially comparable to overhead chute loading washers in terms of the possibility of contamination of clean laundry. Snow White explains in this regard that while the overhead chute loading arrangement has the advantage of permitting the movement of soiled laundry directly from a separate sorting room into the machines (while Snow White must cart the soiled laundry between the two rooms and then manually load the machines), studies have shown that the chute itself may end up being a conduit for contaminants. Snow White also claims that any seeming advantage from having the chute channel the soiled laundry directly into the washers, thus eliminating handling, is mitigated by the fact that the chute actually deposits the laundry on the machine and on the floor at times, necessitating handling, and the additional fact that the chute must be manually cleared when it jams periodically.

Even if Snow White is correct regarding the possible contamination of the chute and the need for some handling despite the chute, it seems to be HHS's position that this possibility nevertheless presents a lesser risk of spreading contaminants than the carting and handling of the soiled laundry necessary under Snow White's single-door washer operation. This position seems reasonable to us. Despite the possibility that the overhead chute system will not operate smoothly in every instance, in theory this system seems to present less opportunity for contamination to take place than does Snow White's single-door washer operation. For instance, while imperfections in the chute system may result in a need for handling of soiled laundry at times (leading to an increased possibility of contamination of clean laundry), Snow White's single-door system requires handling of soiled laundry in every instance, as part of the normal operation. While we have not been presented with

adequate information to rule conclusively on the relative effectiveness of the two systems, we do find the evidence is adequate to conclude that the chute loading system should entail less handling of soiled laundry, and that HHS's determination to restrict the IFB was reasonable.

Moreover, it appears from the record that double door pass through machines clearly provide a superior physical barrier between soiled and clean laundry since the soiled laundry does not have to be transported (by chute or cart) for loading into the washers. Snow White does not claim that its machines are equivalent to these washers or otherwise address the advantages of this type of machine for purposes of avoiding contamination, instead maintaining that no likely offeror will have these washers. While it well may happen that no firm will be capable of bidding based on use of this type of machine, that possibility does not diminish the validity of HHS's determination that such machines would serve what we see as a legitimate need to reduce the risk of contamination; the agency is not required to award a contract for less than its true needs solely because a possibility exists that no firm will offer to meet those needs.

Snow White finds the overhead chute loading washer restriction incongruous in light of the fact that the incumbent was using such a chute loading system at the time of two bacterial contamination outbreaks in the hospital. Were the record to show that the outbreaks had been traced to the chute loading aspect of the laundry operation, this argument would have some practical merit. There is no such showing in the record, however; hospital officials did determine that the outbreaks could have resulted from the contamination of clean laundry, but never found that the overhead chute aspect of the incumbent's laundry operation was the cause. The addition of the overhead chute restriction here suggests that hospital officials in fact have concluded that the chute was not the cause of the outbreaks.

Our Office will not upset an agency's determination as to its needs and the best means of accommodating them absent a clear showing that the determination was arbitrary or unreasonable, since contracting agency officials, not competing firms or our Office, are most familiar with the conditions under which supplies or services will be used. See Engine & Generator Rebuilders, 65 Comp. Gen. 191 (1986), 86-1 C.P.D. ¶ 27. While we believe Snow White has shown that there is valid disagreement over the merits of overhead chute loading washers in preventing clean laundry contamination, we do not believe Snow White has established that HHS unreasonably determined that performance with double door pass through or

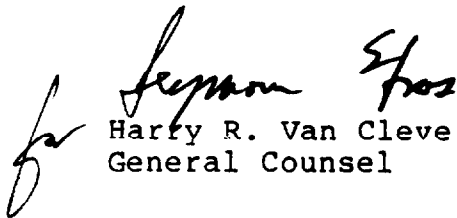
overhead chute loading machines would safeguard against contamination better than would single-door washers. Therefore, the cancellation of the original IFB and resolicitation was proper based on the need to add this requirement.

Snow White asserts that HHS's decision to cancel the IFB really was based not on government needs, but on bias against Snow White. Snow White cites certain events as supporting this assertion, in particular HHS's December 12 meeting to decide whether to oppose SBA's proposed issuance of a COC.

Where a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester, since such officials otherwise are presumed to act in good faith. Prejudicial motives will not be attributed to contracting officials on the basis of inference or supposition. Rodgers-Cauthen Barton-Cureton, Inc., B-220722.2, Jan. 8, 1986, 86-1 C.P.D. ¶ 19.

We already have determined that the cancellation here was justified based on legitimate government needs, and the record contains no evidence of improper agency actions in connection with this procurement. Snow White's impression that the December 12 meeting evidences some improper motive simply is incorrect. There is nothing improper in an agency meeting to decide whether to continue challenging a firm's responsibility to perform through an appeal under SBA's COC procedures.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel